IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

CRP.No. 1407 of 2004()

AGAINST THE ORDER DATED 26/07/2004 IN IA NO.1956/98 IN I.A.NO. 323/1982 IN OS.36/1970 of SUB COURT, TIRUR

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REVN. PETITIONERS:PETITIONERS 5 TO 8,9,11 TO 19,22,25 TO 28,30 TO 32,34 TO 36, 38, 39 TO 43, 45,47 TO 49,50 TO 61, 63,65,67,69 TO 72 & SUPPL.PETITIONERS 73 TO 78 IN I.A.NO.1956 OF 98/ RESPONDENTS 5 TO 7, 14,15,17 TO 19, 20TO25, 28,31 TO 34, 36 TO 38,40 TO 42, 44 TO 49, 51,53 TO 56, 67 TO 72, 83 TO 89, 91,93,95 TO 98 IN I.A.NO.323/1982/DEFENDANTS IN OS.NO.36/1970:

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1. **PATHOMA, MATTUMMAL HOUSE, KOLAPPURAM, KODOYOOR, TIRUR TALUK, MALAPPURAM DISTRICT.**
2. **AYAMMA, ...DO....DO...**
3. **AYISHA BEEVI.....DO.....DO.....**
4. **IRUMBAN MUHAMMADKUTTY, ...DO....DO.....**
5. **KUNJAMUTTY, ...DO.....DO.....**
6. **AHAMMED MUSALIYAR, ...DO....DO.....**
7. **PATHUTTI, ...DO.....DO.....**
8. **SAINUDHEEN HAJI, ...DO...DO.....**
9. **AYISSAKUTTY, ...DO....DO.....**
10. **PATHOMMA, ...DO.....DO.....**
11. **KATHEESUMMA, ...DO...DO.....**

...2/-

12. ITHEEKUTTY, MATTUMMAL HOUSE, KOLAPPURAM, KODOYOOR, TIRUR TALUK, MALAPPURAM DISTRICT.

13. PATHUTTY, ...DO.....DO.....

14. BEEPATHUMMA ,.....DO....DO.....

15. IRUMBAN MOIDEEN, ,.....DO....DO.....

16. KADARKUTTY, ,.....DO....DO.....

17. KUNJEEMUTTY, ,.....DO....DO.....

18. MUHAMMADKUTTY, ,.....DO....DO.....

19. PATHUTTY, ,.....DO....DO.....

20. KUNJEERIYAKUTTY, ,.....DO....DO.....

21. NAFEESA, ,.....DO....DO.....

22. VEERANKUTTY, ,.....DO....DO.....

23. PATHUMMA , ,.....DO....DO.....

24. AYISSA BEEVI, ,.....DO....DO.....

25. MARIYUMMA, ,.....DO....DO.....

26. SULAIKHA, ,.....DO....DO.....

27. SAINABHA, ,.....DO....DO.....

28. KADEEJA, ,.....DO....DO.....

29. JAMEELA, ,.....DO....DO.....

30. NAFEESA, ,.....DO....DO.....

31. KADAKKODIRI KUNJAMUTTY'S WIFE KUNJAMI,.....DO....DO.....

32. MUHAMMED HASSAN, ,.....DO....DO.....

...3/-

33. ABDUL BUKKAR, MATTUMMAL HOUSE, KOLAPPURAM, KODOYOOR, TIRUR TALUK, MALAPPURAM DISTRICT.

34. SALEENA, ,.....DO....DO.....

35. ALAVI''S WIFE PATHUMMAKUTTY ,.....DO....DO.....

36. IRUMBAN PATHOMAKUTTY'S AND ALUNGAL ULLATHUTHODI BEEERANKUTTY'S CHILDREN ASSAYIN ,.....DO....DO.....

37. MUHAMMEDKUTTY, ,.....DO....DO.....

38. AMINA, ,.....DO....DO.....

39. SAINABA, ,.....DO....DO.....

40. KUNJEEMA, ,.....DO....DO.....

41. ULLATHUTHODI BEERANKUTTY ,.....DO....DO.....

42. IRUMBAN ASSIAN'S WIFE PATHUMMA ,.....DO....DO.....

43. ANCHEER ULAHASSAN, ,.....DO....DO.....

44. SAKEER,.....DO....DO.....

45. KHALISH FUTHAH ALI MUHAMMADALI, ...DO....DO.....

46. IRSHADA, ...DO....DO.....

47. PATHUTTY, ...DO....DO.....

48. MUHAMMEDKUTTY, ...DO....DO.....

49. SULAIKHA, ...DO....DO.....

50. SAIDALAVI, ...DO....DO.....

51. SULAIMAN, ...DO....DO.....

52. RUKHIYA, ...DO....DO.....

53. KHADEEJA, ...DO....DO.....

54. MOIDEENKUTTYMASTER, ...DO....DO.....

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55. AHAMMED HAJI, MATTNMMAL HOUSE, KOLAPPURAM, KODOYOOR, TIRUR TALUK, MALAPPURAM DISTRICT.

56. ASSAINAR, ...DO....DO.....

57. ABDURAHIMAN, ...DO....DO.....

58. SAINABA,.....DO....DO.....

59. FATHAMATH, ...DO....DO.....

BY ADV. SRI.K.RAMACHANDRAN
SRI.P.RAMACHANDRAN

RESPONDENTS: RESPONDENTS 2 TO 16 & PETITIONERS: 10,21,23,24,33,37,44,46,62,64C,66,68 IN I.A.1956/98: PETITIONERS 2 TO 16 & RESPONDENTS 16,27,29,30,39, 43 50,52,88,90,92,94IN I.A.323/1982/PLAINTIFFS IN O.S.NO.36/1970:

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1. PULISSERI KUNJEEMUTTY, OVUNGAL HOUSE, IRUMPUCHOLA, P.O. A.R.NAGAR-676 305.

2. MUHAMMED PULISSERI, OVUNGAL HOUSE, IRUMPUCHOLA, P.O. A.R.NAGAR, MALAPPURAM DISTRICT.

3. BIYYAKUTTY, D/O.MOIDEEN, MAMPURAM P.O., VIA. TIRURANGADI, MALAPPURAM DISTRICT.

4. HUSSAIN PULISSERI, OVUNGAL HOUSE, IRUMPUCHOLA, P.O.A.R. NAGAR, MALAPPURAM DSITRICT.

5. PATHUMMA, W/O.PARANGOTTATHU IBRAHIM HAJI VALIYORA, CHENAKKAL, P.O.VALIYORA.

6. AMINAKUTTY AMMA, D/O.MAMMED, PULISSERI HOUSE, IRUMBUCHOLA, P.O. A.R.NAGAR, MALAPPURAM DISTRICT.

7. PULISSERI SAINUDHEEN, S/O.MAMMAD,
VETTOL VIA, IRUMPUCHOLA P.O.,
A.R. NAGAR, MALAPPURAM DISTRICT.

8. ABDUL MAJEED, PULISSERI, OVUNGAL HOUSE,
IRUMPUCHOLA, P.O. A.R.NAGAR, MALAPPURAM DISTRICT.

9. PATHUMMA, PULISSERI HOUSE,
IRUMBUCHOLA, P.O. A.R. NAGAR, MALAPPURAM.

10. KHADEEJA, D/O.MAMMAD, VETTOL HOUSE,
IRUMPUCHOLA, P.O. A.R. NAGAR, MALAPPURAM DISTRICT.

11. P.SAFIYA, W/O.CHAKKALA ABDURAHIMAN,
P.O.VELIMUKKU, PIN-676 317.

12. KUNJUMUHAMMED PULISSERI, VETTOL HOUSE,
IRUMPUCHOLA, P.O. A.R.NAGAR, MALAPPURAM DSITRICT.

13. AYISIYA, D/O.MAMMAD, W/O.MALIYIL MAJEED,
ATHANIKKAL, P.O. A.R. NAGAR,
MALAPPURAM DISTRICT.

14. MUHAMMED, S/O.MAMMAD, PULISSERY HOUE,
DO.DO.

15. THAJUDEEN PULISSERI, VETTOL HOUSE,
IRUMPUCHOLA, P.O. A.R.NAGAR,
MALAPPURAM DISTRICT.

16. AHAMMED MUSLIAR, MATTUMMAL HOUSE,
KOLAPPURAM, KODOYOOR, TIRUR TALUK,
MALAPPURAM DISTRICT.

17. IRUMBAN PATHOMAKUTTY, MATTUMMAL HOUSE,
KOLAPPURAM, KODOYOOR, TIRUR TALUK,
MALAPPURAM DISTRICT.

18. AYISSAKUTTY, MATTUMMAL HOUSE,
KOLAPPURAM, KODOYOOR, TIRUR TALUK,
MALAPPURAM DISTRICT.

19. P.AHAMMED, OVUNGAL HOUSE,
IRUMPOCHALA, P.O. A.R. NAGAR, MALAPPURAM.

20. PATHUMMA, W/O.C.C.MUHAMMEDALI,
MENGOLI MATTIL, P.O.PARAMBIL PEEDIKA,
MALAPPURAM DISTRICT.

21. MUHAMMED KADAKKOTTIRI,
S/O.KUNJIMUTTI, CHELAKKOD,
P.O.KUMMINIPPARAMBA, MALAPPURAM DISTRICT.

22. LATHEEF KADAKKOTTIRI, S/O.KUNJIMUTTI,
CHELAKKODE, P.O.KUMMINIPPARAMBA,
MALAPPURAM DISTRICT.

23. IRUMBAN ALAVI'S SON MOIDEEN,
PATHOTIYIL HOUSE, IRUMBANKUTTAKK,
P.O.PARAMBILPEEDIKA, MALAPPURAM DISTRICT.

24. AYISSAKUTTY HAJUMMA, W/O.ABOOBACKER,
MATTUMMAL HOUSE, KALAPPURAM, KODOYOOR,
TIRUR TALUK, MALAPPURAM DISTRICT.

25. MOIDEENKUTTY, KUNNAPPALLIYIL HOUSE,
IRUMBANKUTTAKK, P.O.PARAMBILPEEDIKA,
MALAPPURAM DISTRICT.

26. BEERANKUTTY, KUNNAPPALLIYIL,
IRUMBANKUTTAKK, P.O.PARAMBIL PEEDIKA,
MALAPPURAM DISTRICT.

27. AYISSAKUTTY, MATUMMAL HOUSE,
KOLAPPURAM, TIRUR TALUK,
MALAPPURAM DISTRICT.

BY ADV. SRI.T.KRISHNANUNNI

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 04/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J

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C.R.P. No.1407 OF 2004

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Dated this the 4th day of June, 2007

O R D E R

This revision petition is filed to set aside the order passed in I.A.No.1956 of 1998 in O.S.No.36 of 1970 of the Sub Court, Tirur. The said application is filed to set aside the Advocate Commissioner's plan and report. The trial court dismissed the application on the ground that there are no merits. It is also observed that the Commissioner has done the work in accordance with the direction contained in the preliminary decree. But the court below also observed that if it is found during evidence if any objection has any merit it can be considered and a remission to that particular defect could be considered and rectified or in other words the court has left the points raised to be decided at the final stage when the parties adduce evidence in support of their respective contentions. Further, in a petition to set aside the Commissioner's plan and report, some evidence should be adduced to see how the Commissioner has gone wrong. Mere filing of an affidavit is not a substitute for evidence.

Therefore I do not find any illegality passed in the order. But at the

same time, if there are valid objections which could be substantiated by materials, the petitioners are at liberty to raise the same and the court on satisfaction should see that the plan and report are remitted and proper report is received. Similarly, if the other side also wants such objections to be considered that side is also at liberty to request the court and let in evidence for the same.

C.R.P. is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-